

CHAPTER 8.

Overall Annual DBE Goal and Projections for FHWA-funded Contracts

As part of its implementation of the Federal DBE Program, ADOT is required to set an overall annual goal for DBE participation in its FHWA-funded transportation contracts. Through this process, agencies such as ADOT must determine “the level of DBE participation you would expect absent the effects of discrimination.”¹

The Final Rule effective February 28, 2011 revised requirements for goal-setting so that agencies that implement the Federal DBE Program only need to develop and submit overall annual DBE goals every three years.

Keen Independent’s 2014 Availability Study for ADOT included an analysis of the overall DBE goal for FHWA-funded contracts. ADOT considered the report along with other information and public feedback before proposing a 9.38 percent overall DBE goal for its FHWA-funded contracts for October 2014 through September 2017 (FFY 2015-FFY2017). ADOT submitted its proposed DBE goal to FHWA in September 2014, while also informing FHWA that it might refine its goal based upon the completed Disparity Study. FHWA approved this goal. (ADOT’s previous DBE goal for FHWA-funded contracts was 7.76 percent for FFY 2012 through FFY 2014.)

Based in part on the 2014 Availability Study, ADOT also projected that it would meet 5.44 percentage points of its overall DBE goal for FHWA-funded contracts through race-neutral means and 3.94 percentage points through race-conscious means. ADOT proposed to continue use of DBE contract goals as its race-conscious program element. FHWA approved these requests as well. As with its overall DBE goal, ADOT informed FHWA that it might refine this information based on the complete Disparity Study in 2015.

Chapter 8 provides information for ADOT to consider if it were to refine its overall annual DBE goal for FHWA-funded contracts and its projection of how much of the goal to be met through race-neutral measures. As disparity analyses for minority- and women-owned firms for ADOT contracts have now been prepared (Chapter 6), ADOT might consider that information as well.

Chapter 8 is organized in three parts based on the process that 49 CFR Part 26.45 outlines for agencies to set their overall goals and project the portion to be met through neutral means:

- A. Establishing a base figure;
- B. Consideration of a step 2 adjustment; and
- C. Portion of overall DBE goal for FHWA-funded contracts to be met through neutral means.

¹ 49 CFR Section 26.45(b).

A. Establishing a Base Figure

Establishing a base figure is the first step in calculating an overall annual goal for DBE participation in ADOT's FHWA-funded transportation contracts.

As presented in Chapter 5, current and potential DBEs are available for 8.90 percent of ADOT FHWA-funded transportation contracts based on analysis of July 2007 through June 2013 FHWA-funded contracts.² This refines the preliminary estimate of 14.61 percent in the 2014 Availability Study. If it were to refine its overall DBE goal, ADOT might consider 8.90 percent as the base figure for its DBE goal.

Chapter 5 explains the methodology for the base figure calculation in considerable detail.

B. Consideration of a Step 2 Adjustment

Per the Federal DBE Program, ADOT considered potential step 2 adjustments to the base figure as part of determining its overall annual DBE goal for FHWA-funded contracts. The information presented here provides updated results that ADOT might consider if it were to refine its overall DBE goal for FFY 2015 through FFY 2017 for FHWA-funded contracts. If ADOT does so, it must explain its consideration of possible step 2 adjustments in its Goal and Methodology document.

The Federal DBE Program outlines factors that an agency must consider when assessing whether to make any step 2 adjustments to its base figure:

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training, and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.³

Keen Independent completed an analysis of each of the above step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information examined was not as easily quantifiable but is still relevant to ADOT as it determines whether to make any step 2 adjustments.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. USDOT's "Tips for Goal-Setting" suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

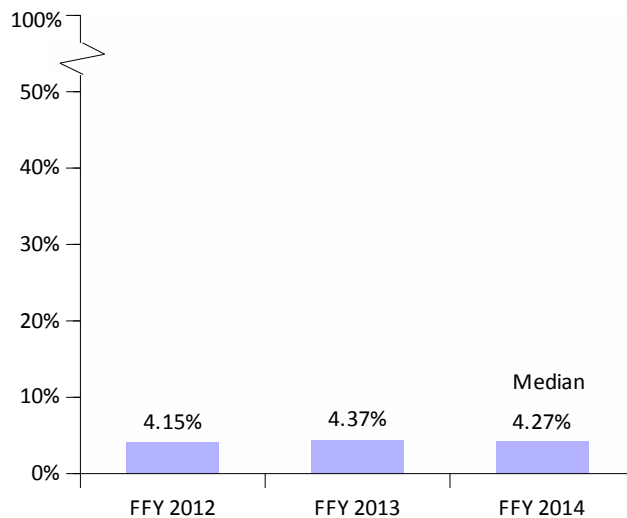
² As discussed in Chapter 5, potential DBEs include current DBEs and those MBE/WBEs that are DBE-certified or appear that they could be based on annual revenue limits described in 49 CFR Part 26.

³ 49 CFR Section 26.45.

DBE participation based on ADOT Uniform Reports to FHWA. Figure 8-1 presents information about past DBE participation based on payments from ADOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FHWA. Participation is shown for FFYs 2012, 2013 and 2014, the three most recent complete federal fiscal years at the time of the Disparity Study (FFY 2014 results had not been compiled at the time of the 2014 Availability Study). ADOT reports that, for purposes of indicating current capacity of DBEs, the payments information for this three-year period may be more reliable than its Commitments and Awards data.

Figure 8-1.
ADOT reported past DBE participation on FHWA-funded contracts based on payments, federal fiscal years 2012, 2013 and 2014

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.



After having discontinued setting DBE contract goals in 2006, ADOT reinstated DBE contract goals for FHWA-funded contracts in FFY 2011. Median DBE participation for FHWA-funded contracts for FFY 2012 through FFY 2014 was 4.27 percent based on ADOT's reports (based on payments). At the time of the 2015 Disparity Study, the most recent full federal fiscal year for which ADOT had reported data was FFY 2014 (ending September 2014).

The median DBE participation (based on payments) for FHWA-funded contracts for the last three full fiscal years, 4.27 percent, indicates that ADOT might make a downward step 2 adjustment based on this factor, as explained later in this chapter.

DBE participation based on Keen Independent utilization analysis for FHWA- and state-funded contracts. Keen Independent's analysis identified 8.18 percent participation of DBEs on FHWA- and state-funded contracts from July 2011 through June 2013 (see Figure 7-4 in Chapter 7). Keen Independent captured more information on FHWA-funded contracts and DBE participation than ADOT was able to include in the Uniform Reports.

Note that the 8.18 percent DBE participation estimate and the 8.90 percent base figure are very close. If ADOT were to use the Keen Independent results for its estimate of DBE participation, it would not need to make a downward step 2 adjustment.⁴ ADOT might consider these data when determining whether to make a downward step 2 adjustment based on past DBE participation.

2. Information related to employment, self-employment, education, training, and unions.

Chapter 4 summarizes information about conditions in the Arizona transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in Arizona are presented in Appendices E through H. Keen Independent's analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Arizona construction and engineering industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform ADOT and local agency transportation contracts.

It may not be possible to quantify the cumulative effect that barriers in employment, education, and training may have had in depressing the availability of minority- and women-owned firms in the Arizona transportation contracting industry. However, the effects of barriers in business ownership can be quantified, as explained below.

The study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Arizona construction and engineering industries. The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F provides detailed results of the business ownership regression analyses).⁵ Those analyses revealed that African Americans, Native Americans and white women working in construction were less likely than non-minorities and white men to own construction businesses, even after accounting for various gender-neutral personal characteristics. Each of these disparities was statistically significant.

Keen Independent analyzed the impact that barriers in business ownership would have on the base figure if African Americans, Native Americans and white women owned businesses at the same rate as similarly-situated non-minorities and white men. This type of inquiry is sometimes referred to as a "but for" analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

Figure 8-2 calculates the impact on overall MBE/WBE availability, resulting in possible upward adjustment of the base figure to 12.61 percent. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FHWA-funded construction and engineering prime contracts and subcontracts that ADOT and local agencies awarded from July 2007 through June 2013). Calculations are explained below.

⁴ Note that "Tips for Goal-Setting" considers the possibility that the base figure and the goal based on a step-2 adjustment might be very close. "If your records suggest levels of past participation very similar to the number you calculated in Step One, then it is not necessary to make any adjustment for past participation." The example USDOT provides for "very similar" is when the base figure and the calculation after the step-2 adjustment are within 1.4 percentage points of one another. "In that case, you do not need to make an adjustment for past participation. Nevertheless, you must explicitly state that the reason you are not making an adjustment for past participation is that your past participation has been very similar to your Step One Base Figure." (See III.A.2. of USDOT, "Tips for Goal Setting.")

⁵ The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois, and Minnesota.

Figure 8-2.
Potential step 2 adjustment considering disparities in the rates of business ownership

| Subindustry and group | a. Current availability | b. Disparity index for business ownership | c. Availability after initial adjustment* | d. Availability after scaling to 100% | e. Components of overall MBE/WBE availability** |
|---|-------------------------------|--|--|--|--|
| Construction | | | | | |
| African American | 1.02 % | 77 | 1.32 % | 1.26 % | |
| Native American | 1.83 | 33 | 5.55 | 5.28 | |
| Other minorities | 6.30 | n/a | 6.30 | 6.00 | |
| White women | <u>4.83</u> | 84 | <u>5.75</u> | <u>5.48</u> | |
| MBE/WBEs | 13.98 % | n/a | 18.92 % | 18.03 % | 16.59 % |
| Majority-owned businesses | <u>86.02</u> | n/a | <u>86.02</u> | <u>81.97</u> | |
| Total firms | 100.00 % | n/a | 104.94 % | 100.00 % | |
| Engineering and other subindustries | | | | | |
| MBE/WBEs | 20.71 % | n/a | 20.71 % | 20.71 % | 1.66 % |
| Majority-owned businesses | <u>79.29</u> | n/a | <u>79.29</u> | <u>79.29</u> | |
| Total firms | 100.00 % | n/a | 100.00 % | 100.00 % | |
| Total for MBE/WBEs | 14.53 % | n/a | n/a | | 18.24 % |
| Difference from current availability | | | | | 3.71 % |

Note: Numbers may not add to 100.00% due to rounding.

* Initial adjustment is calculated as current availability divided by the disparity index for business ownership.

** Components of the base figure were calculated as the value after adjustment and scaling to 100 percent, multiplied by the percentage of total FHWA-funded contract dollars in each industry (construction = 92%, engineering = 8%).

Source: Keen Independent based on FHWA-funded contracts for July 2007 through June 2013, 2015 availability analysis, and statistical analysis of U.S. Census Bureau American Community Survey data for Arizona for 2008-2012.

The study team completed these “but for” analyses separately for construction and engineering contracts and then weighted the results based on the proportion of FHWA-funded contract dollars that ADOT awarded for construction and engineering for June 2007-June 2013 (i.e., a 92% weight for construction and 8% weight for engineering). The rows and columns of Figure 8-2 present the following information from Keen Independent’s “but for” analyses:

- Current availability.** Column (a) presents the current availability of MBE/WBEs by group for construction and for engineering and other subindustries. Each row presents the percentage availability for MBEs and WBEs. The current combined availability of MBE/WBEs for ADOT FHWA-funded transportation contracts for July 2007-June 2013 is 14.53 percent, as shown in bottom row of column (a).
- Disparity indices for business ownership.** As presented in Appendix F, African Americans, Native Americans and white women were significantly less likely to own construction firms than similarly-situated non-minorities and white men.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as non-minorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 8-2 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), white women own construction businesses at 84 percent of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F explains how the study team calculated the disparity indices.

- c. **Availability after initial adjustment.** Column (c) presents availability estimates for MBEs and WBEs by industry after initially adjusting for statistically significant disparities in business ownership rates. The study team calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
- d. **Availability after scaling to 100%.** Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimates equals 100 percent for each industry. The study team re-scaled the adjusted availability estimates by taking each group's adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under "Total firms" in column (c) — and multiplying by 100. For example, the re-scaled availability estimate for white women shown for construction was calculated in the following way: $(5.75\% \div 104.94\%) \times 100 = 5.48\%$.
- e. **Components of overall DBE goal with upward adjustment.** Column (e) of Figure 8-2 shows the component of the total base figure attributed to the adjusted MBE and WBE availability for construction versus engineering and other subindustries. The study team calculated each component by taking the total availability estimate shown in column (d) for construction and for engineering/other — and multiplying it by the proportion of total FHWA-funded contract dollars in each industry (i.e., 92% for construction and 8% for engineering). For example, the study team used the 18.03 percent shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 92 percent for a result of 16.59 percent. A similar weighting of MBE/WBE availability for engineering/other produced a value of 1.66 percent.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 18.24 percent as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the "but for" MBE/WBE availability (18.24%) and the current availability (14.53%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 3.71 percentage points ($18.24\% - 14.53\% = 3.71\%$).

Therefore, based on information related to business ownership, ADOT might consider an upward adjustment to its overall DBE goal of up to 3.71 percentage points. This goal would be 12.61 percent as the 3.71 percentage point adjustment would be from a base figure of 8.90 percent calculated after subtracting availability for MBE/WBEs that are not potential DBEs and adding white male-owned DBEs ($8.90\% + 3.71\% = 12.61\%$).

3. Any disparities in the ability of DBEs to get financing, bonding and insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in the Arizona marketplace.
- Any barriers that MBE/WBEs face in obtaining financing and bonding would also place those businesses at a disadvantage in obtaining ADOT and local agency construction and engineering prime contracts and subcontracts.

Note that financing and bonding are closely linked, as discussed in Chapter 4 and Appendix J.

There is also evidence that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency. This barrier appears to affect small businesses, which might disproportionately impact minority- and women-owned firms.

The information about financing, bonding and insurance supports an upward step 2 adjustment in ADOT's overall annual goal for DBE participation in FHWA-funded contracts.

4. Other factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.⁶

Success in the Arizona marketplace. Among the “other factors” examined in this study was the success of MBE/WBEs relative to majority-owned businesses in the Arizona marketplace. There is quantitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. Chapter 4 summarizes that evidence and Appendix H presents supporting quantitative analyses. There is also qualitative evidence of barriers to the success of minority- and women-owned businesses, as summarized in Chapter 4. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Arizona transportation contracting industry.

⁶ 49 CFR Section 26.45.

Approaches for making step 2 adjustments. Quantification is discussed below.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. Analysis of this factor might indicate a downward step 2 adjustment if ADOT analyzed its estimates of past DBE participation (based on payments) — for recent years, the median reported DBE participation on FHWA-funded contracts was 4.27 percent (from Figure 8-1).

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor.

The difference between the 8.90 percent base figure (calculated in Chapter 5) and 4.27 percent DBE participation is 4.63 percentage points ($8.90\% - 4.27\% = 4.63\%$). One-half of this difference is a downward adjustment of 2.32 percentage points ($4.63\% \div 2 = 2.32\%$). The goal would then be calculated as follows: $8.90\% - 2.32\% = 6.58\%$.

2. Information related to employment, self-employment, education, training, and unions. The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 3.71 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 8-2. If ADOT made this adjustment, the overall DBE goal for FHWA-funded contracts would be 12.61 percent ($8.90\% + 3.71\% = 12.61\%$).

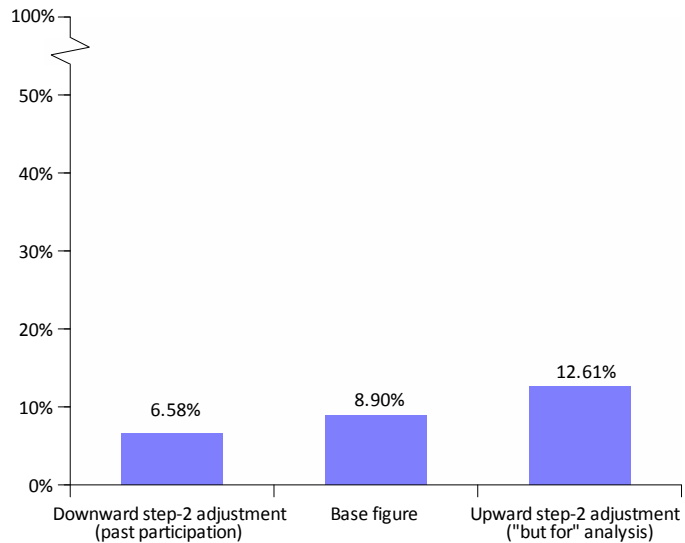
3. Any disparities in the ability of DBEs to get financing, bonding and insurance. Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified.

4. Other factors. Impact of the many barriers to success of MBE/WBEs in Arizona could not be specifically quantified. However, the evidence supports an upward adjustment.

Summary. ADOT will need to consider whether to make a downward, upward or no step 2 adjustment when determining its overall DBE goal. If ADOT makes a downward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FHWA-funded contracts would be 6.58 percent as calculated at the top of page 8. If ADOT decides to not make a downward adjustment and to make an upward adjustment that reflects analyses of business ownership rates, its overall DBE goal would be 12.61 percent. Figure 8-3 summarizes this information.

Note that the downward step 2 adjustment in Figure 8-3 is based on median DBE participation for recent years (based on payments) from ADOT’s Uniform Reports. If ADOT instead evaluated the 8.18 percent DBE participation in the July 2011 through June 2013 time period for FHWA- and state-funded contracts, USDOT guidelines indicate that ADOT would not consider a downward adjustment.

Figure 8-3.
Potential step 2 adjustments
to overall DBE goal for FHWA-funded
contracts



C. Portion of DBE Goal for FHWA-funded Contracts to be Met through Neutral Means

The Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goals using race- and gender-neutral measures.⁷ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. Agencies must determine whether they can meet their overall DBE goals solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, agencies must project the portion of their overall DBE goals that they expect to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any).

- If an agency determines that it can meet its overall DBE goal solely through race- and gender-neutral means, then it would propose using only neutral measures as part of its program. The agency would project that 100 percent of its overall DBE goal would be met through neutral means and that 0 percent would be met through race- and gender-conscious means.
- If an agency determines that a combination of race- and gender-neutral and race- and gender-conscious measures are needed to meet its overall DBE goal, then the agency would propose using a combination of neutral and conscious measures as part of its program. The agency would project that some percent of its overall DBE goal would be met through neutral means and that the remainder would be met through race- and gender-conscious means.

⁷ 49 CFR Section 26.51.

USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral and race- and gender-conscious measures, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.⁸
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.⁹
- An FHWA template for how it considers approving DBE goal and methodology submissions includes a section on projecting the percentage of overall DBE goals to be met through neutral and conscious means. An excerpt from that template is provided in Figure 8-4.

Based on 49 CFR Part 26 and the resources above, general areas of questions that transportation agencies might ask related to making any projections include:

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
2. What has been the agency’s past experience in meeting its overall DBE goal?
3. What has DBE participation been when the agency did not use race- or gender-conscious measures?¹⁰
4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

The balance of Chapter 8 is organized around each of those general areas of questions.

Figure 8-4.
Excerpt from Explanation of Approval of [State] DBE Goal Setting Process for FY [Year]

You must also explain the basis for the State’s race-neutral/race-conscious division and why it is the State’s best estimate of the maximum amount of participation that can be achieved through race-neutral means. There are a variety of types of information that can be relied upon when determining a recipient’s race-neutral/race-conscious division. Appropriate information should give a sound analysis of the recipient’s market, the race-neutral measures it employs and information on contracting in the recipient’s contracting area. Information that could be relied on includes: the extent of participation of DBEs in the recipient’s contracts that do not have contract goals; past prime contractors’ achievements; excess DBE achievements over past goals; how many DBE primes have participated in the state’s programs in the past; or information about state, local or private contracting in similar areas that do not use contracting goals and how many minority and women’s businesses participate in programs without goals.

Source:

FHWA, Explanation for Approval of [State] DBE Program Goal Setting Process for FY [Year].
http://www.fhwa.dot.gov/civilrights/dbe_memo_a4.htm.

⁸ See <http://www.dotcr.ost.dot.gov/Documents/Dbc/49CFRPART26.doc>.

⁹ <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

¹⁰ USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups? The 2014 Availability Study considered conditions in the local marketplace to address this question. Quantitative and qualitative information is summarized below.

The 2015 Disparity Study also provides results of the analyses of MBE/WBE utilization and availability (see Chapters 6 and 7). This information is also summarized below.

Marketplace conditions. As discussed in Chapter 4, Keen Independent examined conditions in the Arizona marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes. It is important to note that some minority and female business owners interviewed did not think they had been affected by race or gender discrimination.

ADOT should review the information about marketplace conditions presented in Chapter 4 and Appendices E through H, as well as other information it may have, when considering the extent to which it can meet its overall DBE goal through neutral measures.

Disparity analysis. Utilization of each racial/ethnic group of minority-owned businesses on ADOT FHWA- and state-funded contracts was substantially below what might be expected from the availability analysis. Based on further statistical analysis, Keen Independent could reject chance in the contracting process as an explanation for the disparities for MBEs. (See Chapter 6 for these results.) For white women-owned firms, some of the analyses indicated disparities and some did not.

Further exploration of utilization for contracts with and without goals, ADOT and LPA contracts, time periods and regions of the study identified generally consistent results for MBEs. There was a pattern of substantial disparities for each group of minority-owned firms. Disparity results for construction contracts were similar to results for all contracts, as were the results for all prime contracts, large prime contracts, small prime contracts and subcontracts. Two MBE groups fared better than other DBE groups for engineering-related contracts, as explained in Chapter 7.

Summary. The combined information from the marketplace and the disparity analysis indicates substantial evidence of different outcomes for each group of minority-owned firms included in the Federal DBE Program: African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms.

There is also substantial evidence that there is not a level playing field for women and women-owned firms in the Arizona marketplace. Disparities for women and women-owned firms include:

- Low entry into construction and engineering jobs;
- Lower construction business formation rates (regression analysis controlling for neutral factors);
- Lower business loan approval rates;
- Higher rate of not applying for business loans due to fear of loan denial (regression analysis controlling for neutral factors);
- Lower mean loan values;
- Higher interest rates;
- More likely to report difficulty in obtaining lines of credit or loans;
- More likely to report difficulty obtaining bonding;
- More likely to report insurance requirements as a barrier;
- Relatively few firms awarded contracts or subcontracts of \$1 million or more (after controlling for subindustry); and
- Lower business earnings (regression analysis after controlling for neutral factors).

If Coffman Specialties is included in the disparity analysis, there was not disparity between the utilization of white women-owned firms and what might be expected from the disparity analysis. However, if that firm is excluded from the analysis (for the reasons outlined in Chapter 6), utilization of WBEs was less than what might be expected based on their availability for this work.

ADOT might consider all of this information when determining whether it will include white women-owned firms as eligible for any race- and gender-conscious programs such as meeting DBE contract goals. If it does not include white women-owned DBEs in its DBE contract goals program, it would need to request a waiver from FHWA.

2. What has been the agency's past experience in meeting its overall DBE goal? ADOT's reported certified DBE participation since it reinstituted DBE contract goals is summarized in Figure 8-5. As shown, reported DBE participation based on DBE commitments/awards on FHWA-funded contracts was slightly lower but within 1 percentage point of the goal for FFY 2012 through FFY 2014.

ADOT also reported participation based on payments to DBEs. These data show participation of slightly more than 4 percent in FFY 2012, FFY 2013 and FFY 2014 after DBE contract goals were reinstated on FHWA-funded contracts. ADOT fell short of overall DBE goals when measured based on payments.

Figure 8-5.

ADOT overall DBE goal and reported DBE participation on FHWA-funded contracts, FFY 2011 through FFY 2014

| Federal fiscal year | DBE goal | DBE commitments/ awards | DBE payments | Difference from DBE goal | |
|---------------------|----------|-------------------------|--------------|--------------------------|----------|
| | | | | Awards | Payments |
| 2011 | 8.00 % | 6.40 % | 0.18 % | -1.60 % | -7.82 % |
| 2012 | 7.76 | 6.82 | 4.15 | -0.94 | -3.61 |
| 2013 | 7.76 | 7.25 | 4.37 | -0.51 | -3.39 |
| 2014 | 7.76 | 7.33 | 4.27 | -0.43 | -3.49 |

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

3. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)?

Keen Independent examined three sources of information to assess race-neutral DBE participation:

- DBE participation on FHWA-funded contracts in the most recent three years in which ADOT did not apply DBE contract goals;
- ADOT-reported race-neutral DBE participation on FHWA-funded contracts for the most recent years;
- Keen Independent estimates of DBE participation on FHWA- and state-funded contracts for which no DBE contract goals applied; and
- Information concerning DBE participation as prime contractors.

The discussion in the following two pages examines these four sets of participation figures.

DBE participation in recent years in which ADOT did not apply DBE contract goals. ADOT did not apply race- or gender-conscious program elements from the beginning of 2006 until well into FFY 2011. For FFYs 2008, 2009 and 2010, the last three full fiscal years for which DBE contract goals were not applied, reported DBE utilization ranged from 1.21 percent to 2.08 percent based on DBE commitments/awards (median of 2.02 percent). ADOT reported DBE participation ranging from 0.87 to 4.30 percent for those fiscal years based on payments data (median of 4.19 percent), as reported in Figure 8-6.

Figure 8-6.

DBE participation on FHWA-funded contracts for most recent three years when DBE contract goals did not apply (FFY 2008-FFY 2010)

| Federal fiscal year | Commitments/ awards | Payments |
|---------------------|---------------------|----------|
| | | |
| 2008 | 1.21 % | 4.19 % |
| 2009 | 2.02 | 4.30 |
| 2010 | 2.08 | 0.87 |

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

Race-neutral DBE participation in recent ADOT Uniform Reports. Per USDOT instructions, ADOT counts as “neutral” participation any prime contracts going to DBEs as well as subcontracts to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

ADOT’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for the three most recent federal fiscal years indicate race-neutral participation of:

- 2.81 percent in FFY 2012;
- 4.23 percent in FFY 2013; and
- 3.11 percent in FFY 2014.

Figure 8-7 presents these results. The right-hand column of Figure 8-7 calculates the share of total participation achieved through neutral means (neutral DBE participation ÷ total DBE participation). In FFY 2014, ADOT achieved 42 percent of its total DBE commitments/awards through neutral means ($3.11 \div 7.33 = 42\%$), higher than in FFY 2012 and lower than in FFY 2013. (Note that agencies prepare these analyses based on commitments/awards, not payments.)

Figure 8-7.

ADOT-reported race-neutral and race-conscious DBE participation on FHWA-funded contracts for FFY 2011, FFY2012 and FFY 2013

| Federal fiscal year | DBE commitments/awards | | | Share achieved through neutral |
|------------------------|------------------------|------------------|--------------------|-----------------------------------|
| | Total | Race- neutral | Race- conscious | |
| 2012 | 6.82 | 2.81 | 4.01 | 41 |
| 2013 | 7.25 | 4.23 | 3.02 | 58 |
| 2014 | 7.33 | 3.11 | 4.22 | 42 |

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

DBE participation on contracts without DBE contract goals. Keen Independent also analyzed DBE participation on ADOT’s FHWA- and state-funded contracts without DBE contract goals. As reported in Chapter 7, ADOT achieved 5.0 percent DBE participation on these contracts from July 2007 through June 2013.

DBE participation as prime contractors. Focusing just on participation as prime contractors, DBEs obtained 2 percent of prime contract dollars on FHWA- and state-funded contracts.

4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year? When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ADOT must review the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or could consider for future implementation.

Keen Independent's analysis of neutral remedies in Chapter 7 indicates that ADOT has implemented an extensive set of neutral measures. Three current initiatives that could affect participation are:

- ADOT has retained Donato Consulting to conduct one-on-one meetings with potential DBEs identified in the 2014 Availability Study to encourage firms to become DBE certified. This is one way to increase reported DBE participation through neutral means, as some of these companies may already be doing business with ADOT. Certification will allow this participation to count toward ADOT's overall DBE goal.
- ADOT plans to expand online information available to small businesses, including DBEs, through a Virtual Assistant website. This new website might be launched within the next 12 months.
- ADOT has a "Just One More" campaign to encourage prime contracts to use one more DBE than needed to meet a DBE contract goal.

At this time, it is difficult to quantify how much the above initiatives can increase race-neutral participation of DBEs in ADOT's FHWA-funded contracts.

Keen Independent also examined other potential neutral measures. Research into expanded SBC programs, such as SBC contract goals and an SBC set-aside program, indicate that ADOT might not have the authority under state law to implement such measures. Although ADOT might consider further research into these two initiatives, it does not appear that they could be implemented within the FFY 2015 through FFY 2017 time period for which these projections apply (or ever under current restrictions).

Summary

Chapter 8 provides information to ADOT as it considers (1) any refinements to its overall DBE goal for FFY 2015 through FFY 2017 for FHWA-funded contracts, (2) any revisions to its projection of the portion of its overall DBE goal to be achieved through neutral means, and (3) if all DBE groups will be allowed to participate in any DBE contract goals program, or whether ADOT will request a waiver that limits participation to certain groups.

1. Overall DBE goal for FHWA-funded contracts. ADOT might consider a refinement to its overall DBE goal based on updated information in the Disparity Study. As explained in Chapter 5 and further explored in Chapter 8, ADOT might consider setting its goal at the base figure of 8.90 percent DBE participation.

2. Should ADOT project that it can meet all of its overall DBE goal through neutral means?

ADOT must consider whether it can achieve 100 percent of its overall DBE goal through neutral means or whether race-conscious programs are needed. Such a determination depends in part on the level of the overall DBE goal. If ADOT's overall DBE goal for FHWA-funded contracts is in the range of 8.90 percent or higher, the evidence presented in this report indicates that ADOT might not meet its DBE goal solely through neutral means.

ADOT should consider all of the information in the report and other sources when reaching its decision on any use of race- and gender-conscious programs (such as DBE contract goals).

- There is information indicating disparities in outcomes for minorities and women and some qualitative evidence of discrimination within the local transportation contracting marketplace, as summarized in Chapter 4.
- Median annual DBE participation for the last three full federal fiscal years in which ADOT operated a 100 percent neutral program was 2.02 percent based on awards/commitments and 4.19 percent based on payments. This level of participation is considerably below an overall DBE goal in the range of 8.90 percent.

Since ADOT has set DBE contract goals on FHWA-funded contracts for the full federal fiscal year, its reported race-neutral participation has been 2.81 percent (FFY 2012), 4.23 percent (FFY 2013) and 3.11 percent (FFY 2014). Each of these figures for race-neutral participation is well below a future overall DBE goal in the range of 8.90 percent or higher.

Keen Independent estimates 5.0 percent DBE utilization on FHWA- and state-funded contracts without DBE contract goals during the study period. Although this estimate of participation is higher than what ADOT has reported, it is still considerably less than an 8.90 percent overall DBE goal.

- ADOT has extensive neutral measures in place and there are many small business assistance programs offered by other institutions throughout the state. Any additional measures ADOT might be able to immediately institute would probably have only a small impact in comparison with what already exists. It is unlikely that ADOT could increase its neutral participation of DBEs to reach an overall DBE goal in the range of 8.90 percent solely through additional neutral measures.

3. If ADOT uses a combination of neutral means and DBE contract goals, how much of the overall DBE goal can ADOT project to be met through neutral means? In fall 2014, ADOT set an overall DBE goal of 9.38 percent for FHWA-funded contracts for FFY 2015 through FFY 2017 and projected that 5.44 percentage points of its overall goal would be met through neutral means. The additional information in this Disparity Study not only supports a lower overall DBE goal but also a somewhat lower projection of DBE participation achieved through neutral measures, perhaps 5.00 percent. This is still above ADOT's projection of 2.68 percent neutral attainment in place for FHWA-funded contracts during the previous three-year period.

For the following reasons, ADOT might consider a race-neutral projection of about 5 percentage points for its overall DBE goal for FFY 2015 through FFY 2017:

- Median DBE participation was 4.19 percent for the three most recent federal fiscal years in which ADOT operated a 100 percent neutral program (from ADOT reports to FHWA using payments data as discussed on page 13 of this chapter).

- The race-neutral portion of ADOT's DBE participation was in the range of 3 to 4 percent based on ADOT's reports for FFY 2012 through FFY 2014 as examined on page 14 of this chapter).
- ADOT neutral initiatives are already considerable, and will continue to expand.
- Keen Independent's analysis of DBE participation on ADOT FHWA- and state-funded contracts without DBE contract goals indicated 5.0 percent utilization of DBEs.

As noted above, ADOT projected a 5.44 percent point neutral and 3.94 percentage point race-conscious split when it prepared its overall DBE goal of 9.38 percent for FFY2015 through FFY 2017 after the 2014 Availability Study. The first column Figure 8-8 presents these recent projections.

The second column of numbers in Figure 8-8 is an example of projections using an overall DBE goal of 8.90 percent and a 5.00 percentage point projection for race-neutral for FFY 2015 through FFY 2017. The race-conscious portion of the goal is 3.90 percentage points ($8.90\% - 5.00\% = 3.90\%$).

As shown, a 3.90 percentage point projection of DBE participation through race-conscious measures is similar to the 3.94 percentage point race-conscious projection developed in fall 2014.

Figure 8-8.

Current ADOT overall DBE goal and projections of race-neutral for FHWA-funded contracts for FFY 2015 through FFY 2017 and example of revised overall goal and projections (spring 2015)

| Component of overall DBE goal for FHWA FFY 2015-FFY 2017 | Fall 2014 | Spring 2015 |
|---|------------------|--------------------|
| Overall goal | 9.38 % | 8.90 % |
| Neutral projection | 5.44 | 5.00 |
| Race-conscious projection | 3.94 | 3.90 |